

(1978) 01 KAR CK 0015
In the Karnataka High Court
Case No : WP. 11826 of 1977

Vidya Dana Samiti

APPELLANT

Vs

Burli A.R. and Others

RESPONDENT

Date of Decision : 25-01-1978

Acts Referred:

Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 — Section 7

Citation : (1978) 1 KarLJ 255

Hon'ble Judges : Puttaswamy, J

Judgement

1. In Gadag Town, the petitioner a registered Educational Institution (hereniafter referred to as "the Management") is running a composite Junior College for boys and girls separately. One Shri H.S. Huilgol who was working as the Principal of the girls section of the College was due to retire on 1-4-76. On 25-3-76 the Management in Its order No. 168/75-76 placed respondent-2 to be incharge Principal of the girls section until a permanent arrangement is made in pursuance of which respondent-2 has been functioning as the incharge Principal from 1-4-76 of the girls section. Apparently dissatisfied with the said arrangement of the Management, respondent-1 approached the Management to settle the inter se seniority between him and respondent-2 and promote him as a regular principal of the girls section in place of respondent-2. For various reasons which are unnecessary to examine, the Management informed respondent-1 by its replies d. 17-12-76 and 22-12-76 that no permanent arrangement has been made and that the matter would be decided on receipt of a reply from the Director of Public Instruction, Bangalore, who, in turn, appears to have referred the matter to Govt. Without waiting for a final reply or order from the Management, on 27-1-77 respondent-1 approached the Educational Appellate Tribunal and Dist Judge, Dharwar, (hereinafter referred to as "the Tribunal") in an appeal inter alia contending that he had been unjustly superseded and there was a penalty imposed on him claiming the following reliefs:

"11. The appellant prays:

(a) an order be passed against respondent No. 1 to discontinue respondent No. 2 as Principal incharge and to appoint the appellant as the Principal of the VDS. Junior College for Girls Cu.Smt.SPH. Girls" High School, Gadag, forthwith, and as from 1-6-1976.

(b) all monetary benefits i.e., the difference in pay of the appellant as an Assistant Teacher and as Principal from 1-4-1976 be awarded to him from respondent No. 1, till his appointment as Principal.

(c) costs of the appeal be awarded to the appellant from respondent No. 1.

(d) all other ancillary reliefs be granted."

In the appeal filed by him before the Tribunal, respondent No. 1 does not say that the appeal is lodged against any order communicated in writing by the Management, nor does he say that any order issued by the Management is produced in support of his case. In justification of filing the appeal in para 7 of his appeal, respondent No. 1 has stated as under:

"7. The cause of action for this appeal arises at the end of 31-12-1976 as even on this date, the management i.e., respondent No. 1 did not appoint the appellant principal nor even a reply to his representation dated 20-12-1976 is sent till today."

Notwithstanding the fact that there was no order communicated in writing and the appeal itself was not lodged against any order communicated in writing by the Management, the Tribunal entertained the appeal filed by respondent No. 1 and issued notices to the parties. In the written objection filed as also at the hearing, the Management maintained before the Tribunal that there was no order communicated in writing to respondent No. 1 imposing a penalty or otherwise affecting his conditions of service to his prejudice and therefore the appeal filed purporting to be under Sec. 8 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 (Karnataka Act No. 10 of 1975) (hereinafter referred to as the 1975 Act) was wholly incompetent and was not maintainable. Apart from the above preliminary objection to the maintainability of the appeal, the Management also maintained that an in-charge arrangement was not a promotion and therefore there was no occasion for the Tribunal to interfere with the action taken by it. On 31-10-1977 the Tribunal overruling both the objections of the Management has allowed the appeal of respondent No. 1 and has issued various directions as set out in para 21 of its order reproduced hereunder:

"21. In the result, I allow the appeal. I direct respondent No. 1 (institution) to appoint the appellant as the Principal of Junior Composite College for Girls cum Smt. SPH. Girls High School, Vidya Dan Samiti, Gadag, in place of Shri. T.T. Diwate respondent No. who is now working as the officiating Principal of the said College, on the usual terms and conditions. I am not inclined to consider the prayer of the appellant for being treated as the Principal retrospectively from the date of the appeal. That prayer is rejected."

In this writ petition under Art. 226 and 227 of the Constitution of India, the Management has challenged the order dated 31-10-1977 of the Tribunal (Exhibit "E").

2. Shri R.U. Goulay, learned Counsel for the Management, contended that in the absence of an order communicated in writing to respondent No. 1 imposing any penalty or otherwise affecting his conditions of service to his prejudice, the Tribunal had no jurisdiction to entertain the appeal under Sec. 8 of the 1975 Act and therefore its order is wholly without jurisdiction. Earlier, I have pointed out that there was no order communicated in writing to respondent No. 1 and that the appeal filed by respondent No. 1 does not also purport to be presented against any order communicated in writing. Shri K.S. Savanur, learned Counsel for respondent No. 1 realising the infirmity in the order of the Tribunal, however, sought to support its order on the ground that there was a failure on the part of the Management to consider his client's case and therefore there was an implied rejection for which reason, the appeal was maintainable. In order to decide the above question, it is necessary to read Sections 7 and 8 of "The 1975 Act" which read thus:

"7. Communication of orders:-

Every order of the Board of Management terminating the services of an employee or imposing penalty or otherwise affecting his conditions of service to his prejudice shall be communicated in writing to the employee.

8. Appeals:- (1) Any employee aggrieved by an order of the Board of Management may within three months from the date of communication of the order appeal against such order to the Educational Appellate Tribunal constituted under Sec. 10. The provisions of Sec. 5 of the Limitation Act, 1963 shall be applicable to such an appeal.

(2) Notwithstanding anything contained in sub-section (1), any employee aggrieved by an order of dismissal or removal made by the Board of Management at any time within one year before the date of commencement of this Act may also appeal against such order within three months from such date."

Sec. 7 in express terms provides that an order of the Management terminating the services of an employee or imposing a penalty or otherwise affecting his conditions of service to his prejudice should be communicated in writing to the employee. Sec. 8 confers a right of appeal on the employee against any order of the management communicated to him under Sec. 7 of "the 1975 Act". On a combined reading of Sec. 7 and 8 of the 1975 Act, it is clear that there should be an order communicated in writing to an employee to maintain an appeal under Sec. 8 of the 1975 Act and without there being an order under Sec. 7, an employee cannot maintain an appeal under Sec. 8 of the 1975 Act before the Tribunal. I have already pointed out that respondent No. 1 did not purport to file his appeal against any order communicated in writing by the management. In para 7 of his appeal memo reproduced earlier respondent No. 1 has urged that

the cause of action for his appeal has arisen at the end of 31-12-1976 and the same has continued even on the day the appeal was lodged before the Tribunal. As is well known, cause of action is a term employed in instituting original suits in Civil Courts and is hardly applicable to appeals. In para 17 of the judgment, the Tribunal has observed as under:

"Thus it is obvious that the Management is evading the issue and it is that which gave cause of action to the present appellant to come up in appeal before this Tribunal.

In my view, the theory of causa of action has no application to appeals and the Tribunal has committed a manifest error of law apparent on the face of the record in entertaining and upholding the appeal of respondent No. 1 on a theory that is wholly inapplicable to appeals. In any event, having regard to the express language employed in Secs. 7 and 8 of "the 1975 Act" which require that there should be an order communicated in writing, the Tribunal committed an error of jurisdiction and illegality in entertaining the appeal of respondent No. 1 and giving him the reliefs which are also without jurisdiction."

3. Sec. 7 of the 1975 Act uses the term "order" which is required to be communicated in writing. The word "order" has not been defined in the Act. I have therefore to ascertain its meaning from the context in which it occurs. The word "order" is a well known legal expression and is generally understood as a command or a direction by a Court or an authority intended to affect the rights of the parties. One of the Dictionary meanings given to the term "order" in the Chambers 20th Century Dictionary, Revised Edition, appropriate in the context is-"command". In Jowitt's Dictionary of English Law (Vol. 2) at page 1290 the following meanings are noticed:

"Order: Mandate, precept, command; also a class or rank." In express terms Sec. 7 of the Act required the order of the Management to be communicated in writing and in that view itself it is not permissible for the Courts to apply the principle of an implied rejection and construe it as an implied order to maintain the appeal of respondent No. 1 before the Tribunal. In my view, the dictum of Fullager J, in *Ex.P. in Association of Architects* (1950 All England Reports 827) noticed in Strouds Judicial Dictionary of Words and Phrases, III Edition, on page 2013 of Vol. 3 "in the absence of some special definition or some special context the word "order" does not include a refusal to adjudicate" equally applies to reject the contention of Shri K.S. Savanur.

4. Shri K.S. Savanur, learned Counsel for respondent No. 1, strongly relied on the observations made by a Division Bench of the Punjab High Court at para 9 in *Daya Swarup Nehra v. State of Punjab*, AIR. 1964 Pun. 533, reproduced hereunder.

"(9) The objection that the petitioners have approached this Court with undue haste without waiting for the result of their representations may first be disposed of. The real core or substance of this objection appears to me to be that the writ

petition is premature because the Minister and the Secretary Capital Project might well have granted to the petitioners the relief claimed by them. The objection is not based on the plea of the existence of an equally adequate and effective alternative remedy and has not been argued as such. It may be recalled that paras-3 to 5 of the writ petition which have been admitted in the written statement and para-10 of the replication fully establish that the Minister and the Secretary Capital Project were not attaching to the petitioners' representation the importance it deserved. The grievance was undoubtedly of an urgent nature and the telegram dt. 30-9-1963 was further suggestive of the urgency of the matter, demanding immediate attention. To have kept the representation just pending in the usual routine without maintaining status quo and stopping further construction gives an impression of bureaucratic indifference, inertia or red-tapism, apparently inconsistent with the basic principles of justice and fair play on which our democratic welfare republic is founded. It may also tend to afford a plausible basis to the aggrieved party for founding an unpleasant charge of trickiness, suggestive of mala fides, against the high placed responsible authorities—a charge, which must in turn tend to lessen or weaken the people's faith in the avowed qualities of our constitutional set up, and make them somewhat sceptic, giving rise to misgivings in their minds, towards the ethical basis of our responsible democratic welfare republic. If the Preamble of our Constitution, which is the result of several years of deep deliberation by the nation's chosen representatives, has any meaning, and is not a collection of mere empty words or an abstract declaration, and if India is to grow into a truly robust welfare State of the republican pattern, as envisaged by the Constitution, then one would have expected a more prompt and less indifferent or casual attitude on the part of the authorities in disposing of the petitioners' representations. The instinct of justice must in this Republic infuse the work of the administrative wing just as well as it does the judicial wing. On the undisputed facts disclosed in the pleadings, the objection on ground of haste against the petitioners is wholly unjustified, in that, any more delay in approaching this Court might well have rendered the petition infructuous. The State while dealing with the citizens is not expected to rely on unethical ultra-technical pleas having no just basis. The objection was ill-advised and is repelled as unmeritorious."

In Daya Swarup Nehra's case, AIR. 1964 Pun. 533, before the Punjab High Court, the petitioners therein had challenged the action of the authorities in constructing certain buildings on sites allotted to them contrary to the provisions of the zonal plans approved under the Capital of Punjab Development and Regulation Act of 1952. In the context of the authorities not taking any action on their requests and the objection of the State that the writ petitions were premature, the Punjab High Court made the above observations. In my view, the above observations of Dua J, in the context of the exercise of power by the High Court under Art. 226 for issuing a writ of mandamus has no application to a case arising under the Act and the exercise of power by the Tribunal with limited

jurisdiction. It is well to remember that the Tribunal is not conferred with administrative and supervisory jurisdiction over private educational institutions in respect of their day to day administration. I therefore, see no force in the contention of Shri K.S. Savanur to sustain the order of the Tribunal on the grounds noticed by me. In that view, it has to be held that the order of the Tribunal is without jurisdiction and suffers from manifest illegalities, resulting in failure of justice to the petitioner and is therefore liable to be quashed by issue of a writ of certiorari.

5. Shri R.U. Goulay also took exception to the observation of the Tribunal in para 7 of its judgment wherein it has observed that respondent No. 2 has been appointed on an "officiating basis". In the order dated 25-3-1976, respondent No. 2 has been only placed incharge till a permanent arrangement is made. The order reads thus:

"No. 168/75-70 Office of the Vidya Dana Samiti, Gadag, Date: 25-3-1976.

To

Shri T.T. Divate, B.Sc., B.Ed., Seniormost Teacher, T.D.S. Smt. S.P.H. Girls" Hr. Sec. School, Gadag.

Sub: Taking over charge of the Principalship of V.D.S. Smt. S.P.H. Girls" Hr. Sec. School, Gadag, on 31st March, 1976 in the afternoon.

Shri H.S. Huilgol, Principal V.D.S. Smt. SPH. Girls" Hr. Sec. School, Gadag, is going to retire from service on 1st April 1976. He is asked to hand over charge of the Principalship on 31st March 1976 in the after noon as per GBR No. 1 of 22-3-1976.

You are hereby informed to take over charge of the Principal-ship from Shri H.S. Huilgol on 31st March, 1976 in the afternoon and be in charge for the present until permanent arrangement is made.

Sd. President, Vidya Dana Samiti, Gadag."

An incharge arrangement as observed by Govind Bhat J, as he then was, in *Maridev v. State of Mysore*, (1968) 1 Mys. L.J. 325, does not amount to a promotion much less an officiating promotion. In that view, the observation of the Tribunal that respondent-2 has been promoted on an officiating basis is contrary to the express terms of the order of the Management and is wholly inaccurate.

6. At the hearing of the writ petition, Shri R.U. Goulay, learned Counsel for the petitioner, to assuage the grievances of respondent No. 1 that the Management has been indefinitely postponing a decision in the matter and without reference to any decision that I may render in the case has filed a Memo which reads thus:

"Memorandum-In this the petitioner submits as under:

The 1st respondent has been agitating that he is entitled for appointment as a

Principal in the Girls Section of the Institution. The preparation of the amalgamated list of eligible persons is under consideration of the Director of Public Instruction and Government. Latest reply given by the Management is Exhibit "A" dated 15-1-77 during the pendency of the case before the Educational Appellate Tribunal, Dharwar. However, the controversial matters would be finalised within 3 months, with the assistance of the authorities of the Educational Department and State Government because it involves interpretation of the grant-in-aid regulations."

The Memo filed by the Petitioner is recorded. I, therefore, quash the impugned order of the Tribunal by issue of a writ of certiorari.

7. Rule made absolute.

8. In the circumstances of the case, I direct the parties to bear their own costs.